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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 FRANCISCO MERINO,  
12 Plaintiff,

13 v.

14 VIVIAN VUONG,  
15 Defendant.  
16

No. 2:21-CV-0826-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42  
18 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,  
19 ECF No. 54.

20 The United States Supreme Court has ruled that district courts lack authority to  
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.  
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the  
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935  
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success  
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the  
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is  
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
4 articulate his claim. The facts he alleged and the issues he raised were not  
5 of substantial complexity. The compelling evidence against Terrell made it  
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional  
9 circumstances. A review of Plaintiff's filings in this case reflects that he has a sufficient ability to  
10 articulate himself on his own, with some assistance from other inmates. Further, as discussed in  
11 the Court's December 14, 2021, findings and recommendations, there is no likelihood of success  
12 on the merits because Plaintiff's allegations fail to state a claim upon which relief can be granted.

13 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the  
14 appointment of counsel, ECF No. 54, is denied.

15 Dated: October 18, 2022



16 DENNIS M. COTA  
17 UNITED STATES MAGISTRATE JUDGE  
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